Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-196

THE STATE OF TENNESSEE, EX REL., ROBERT CONGER, BEN LANGFORD AND JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System,
Petitioners,

v.

MADISON COUNTY, TENNESSEE, a political subdivision of the State of Tennessee; WALTER BAKER HARRIS, County Judge of Madison County, Tennessee; LEON JOHNSEY, *Trustee* of Madison County, Tennessee; and TRANSAMERICA INSURANCE COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Tennessee

BRIEF AMICUS CURIAE ON BEHALF OF THE TENNESSEE MUNICIPAL LEAGUE URGING THE GRANTING OF THE WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

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INTEREST OF AMICUS CURIAE

This brief *amicus curiae* is submitted on behalf of the Tennessee Municipal League with the written consent of all parties to this litigation, given in letters which have been filed with the Clerk of this Court.

The Tennessee Municipal League is a public association representing approximately 280 incorporated municipalities throughout the State of Tennessee. One of its primary purposes is to safeguard the interests, rights and privileges of those member municipalities as they may be affected by state and federal legislation. Many of the member municipalities of the Tennessee Municipal League have much the same characteristics as the Petitioners in that they also operate a city school system or a special school system within the boundaries of their respective county. In addition, those particular member municipalities operating a city school system or a special school system within their boundaries depend upon the respective county school fund and its pro rata division in accordance with Tenn. Code Ann. § 49-605 (1977) (current version at Tenn. Code Ann. § 49-614 (Supp. 1978)), for a portion of the required operating funds needed each year which, until the decision rendered by the Tennessee Supreme Court in this case, included Federal Revenue Sharing Funds. Because of the magnitude of the decision by the Tennessee Supreme Court by its interpretation and construction of the statutory procedure established by 31 U.S.C.A. § 1243 (a)(4) (1976), for the expenditure of Federal Revenue Sharing Funds by states and local governments, and the impact of this decision upon the member municipalities of the Tennessee Municipal League, the Tennessee Municipal League is vitally interested in the final determination of this litigation. The impact of the decision of the Tennessee Supreme Court, if it is upheld, would be the potential loss of Federal Revenue Sharing Funds by other city and special school systems that are operated by the member municipalities of the Tennessee Municipal League. The City of Jackson alone for the 1976-77 fiscal year suffered a loss of $190,207.82 and for the 1977-78 fiscal year suffered a loss of $543,214.88 by the refusal of the county trustee to apportion the Federal Revenue Sharing Funds appropriated to the county school fund in accordance with Tenn. Code Ann. § 49-605. This is a continuing loss.

It is in order to protect the interests and rights of the member municipalities that the Tennessee Municipal League is filing this brief as *amicus curiae* in support of the petition for a Writ of Certiorari to the Supreme Court of the State of Tennessee to review the construction and interpretation by that court of 31 U.S.C.A. § 1243 (a)(4) for the expenditure of Federal Revenue Sharing Funds by states and local governments.

ARGUMENT

The Tennessee Supreme Court Disregarded the Federal Mandate Set Forth in the Federal Revenue Sharing Act That a State or Local Government Is to Provide for the Expenditure of Feedral Revenue Sharing Funds Only in Accordance With the Laws and Procedures Applicable to the Expenditure of Its Own Revenues, Therefore, This Court Should Issue a Writ of Certiorari to Review the Tennessee Supreme Court's Decision.

The controversy presented to this Court by means of a petition for a Writ of Certiorari to the Supreme Court of the State of Tennessee concerns the construction and application of a provision of the State and Local Fiscal Assistance Act of 1972 (Federal Revenue Sharing Act) 31 U.S.C.A. §§ 1221, *et seq.* (1976 & Supp. 1979), dealing with the expenditure of Federal Revenue Sharing Funds by states and local governments. The Tennessee Supreme Court construed the applicable provision of the Act, 31 U.S.C.A. § 1243, erroneously and rendered a decision that is in conflict with the mandates of the Act. It is for this reason that the Tennessee Municipal League respectfully requests, as *amicus curiae*, that this Court issue a Writ of Certiorari to the Supreme Court of the State of Tennessee to review its decision and make a definitive interpretation of the meaning and application of the federal statute involved in this controversy.

A. The Federal Revenue Sharing Act in 31 U.S.C.A. § 1243 (a)(4), provides for federal control in the expenditure of Federal Revenue Sharing Funds by a state or local government, therefore, this mandate must be followed or a direct violation of the Act will occur.

The Federal Revenue Sharing Act was enacted with the primary intent and objective of returning to states and local govern-

ments revenues collected by the federal government for use "according to their own perceived demands and objectives and not those of the federal government." *Carolina Action v. Simon*, 389 F. Supp. 1244, 1248 (M.D.N.C. 1975). This concept has commonly been referred to as a "no federal strings attached" approach to federal assistance. 1972 U.S. Code Cong. & Ad. News 3874, 3874-76, 3888-89. Nevertheless, the Act does contemplate federal control in certain areas. The area of federal control relevant to this controversy is 31 U.S.C.A. § 1243 which provides the mechanism whereby the Treasury Department can insure that Federal Revenue Sharing Funds are expended in accordance with the requirements of the Act. Section 1243 (a)(4) provides that in order to qualify for Federal Revenue Sharing Funds, a state or local government must establish to the satisfaction of the Secretary of the Treasury that it "will provide for the expenditure of amounts received under subchapter I of this chapter [Federal Revenue Sharing Funds] *only in accordance with the laws and procedures applicable to the expenditure of its own revenues.*" (Emphasis supplied).

Therefore, 31 U.S.C.A. § 1243 (a)(4) mandates that, for the purposes of the appropriation and expenditure of Federal Revenue Sharing Funds by states and local governments, these federal funds, in effect, lose their identity as Federal Revenue Sharing Funds and are to be treated in the same manner and expended according to the same laws as any other unearmarked revenues or funds that are collected or received by a state or local government. The language of 31 U.S.C.A. § 1243 (a)(4) is crucial in that it makes it clear that the federal scheme established by the Federal Revenue Sharing Act for the expenditure of these federal funds contemplates deferring to the laws and procedures of the states and local governments for the expenditure of their own revenues for the purposes of determining how Federal Revenue Sharing Funds are to be expended. Moreover, this statutory provision makes it clear that these funds are

not to be accorded any special status, solely because they are Federal Revenue Sharing Funds, when the respective laws and procedures for the expenditure of a state's or local government's own revenues are applied for the expenditure of Federal Revenue Sharing Funds. Rather, Federal Revenue Sharing Funds are to be treated the same as any other unearmarked revenues of a state or local government.

This Court's refusal to issue a Writ of Certiorari to the Tennessee Supreme Court to review the decision of that court and the consequential refusal to render a definitive interpretation of 31 U.S.C.A. § 1243 (a)(4) would only tend to perpetuate the erroneous construction and application of this statutory provision by the courts of the State of Tennessee and would facilitate the potential that other jurisdictions would also construe and apply this provision erroneously.

B. The Tennessee Supreme Court disregarded the federal mandate set forth in 31 U.S.C.A. § 1243 (a)(4) of the Federal Revenue Sharing Act for the expenditure of Federal Revenue Sharing Funds by a state or local government, therefore, its decision is in direct conflict with the Act.

The Tennessee Supreme Court in the present case was squarely faced with the issue of whether Federal Revenue Sharing Funds, once they have been appropriated to the county school fund, must be apportioned according to the same law and procedure applicable to the apportionment of local revenue appropriated to the county school fund. While local revenue appropriated to the county school fund must be apportioned according to the provisions of Tenn. Code Ann. § 49-605 (1977), the court held that Federal Revenue Sharing Funds appropriated to the same county school fund need not be so apportioned in accordance with the statute. The Tennessee Supreme Court reached an erroneous decision since it disregarded the federal mandate

established by 31 U.S.C.A. § 1245 (a)(4) that Federal Revenue Sharing Funds are to be expended by a state or local government only in accordance with the laws and procedures applicable to the expenditure *of its own revenues*. The law and procedure applicable to the expenditure of county revenues appropriated to the county school fund is Tenn. Code Ann. § 49-605 which provides in pertinent part:

> All school funds for current operation and maintenance purposes collected by any county, . . . shall be apportioned by the county trustee among the county, city and special school districts therein on the basis of the average daily attendance maintained by each during the current school year.

The Quarterly Court of Madison County, Tennessee, beginning in the fiscal year 1976-77 and continuing to the present time, began appropriating to the county school fund, for current operation and maintenance purposes, revenue derived from local sources and Federal Revenue Sharing Funds received from the federal government. Although the county trustee apportioned that portion of the school funds derived from county revenues in accordance with Tenn. Code Ann. § 49-605, the county trustee refused to apportion that portion of the school fund derived from funds received under Federal Revenue Sharing. The Tennessee Supreme Court's holding that the Federal Revenue Sharing Funds that were appropriated to the county school fund need not be apportioned in accordance with § 49-605 was based solely on the ground that these funds, being Federal Revenue Sharing Funds, were not within the scope of the statute. The court was led to this construction by its erroneous conclusion that 31 U.S.C.A. § 1243 (a)(4) of the Federal Revenue Sharing Act was not applicable to the determination of how Federal Revenue Sharing Funds were to be treated by states and local governments. Rather, the court concluded that the construction of state statutes, particularly Tenn. Code Ann.

§ 49-605, would be determinative. However, 31 U.S.C.A. § 1243 (a)(4) mandates that once a county elects to appropriate Federal Revenue Sharing Funds to its school fund that these funds lose their identity as federal funds and must be treated in the same manner and expended according to the same laws and procedures that apply to the expenditure of any other unearmarked revenues received by the county. This result is required by the Act. Therefore, the Quarterly Court of Madison County, Tennessee, once it had appropriated Federal Revenue Sharing Funds to the county school fund, should have apportioned these funds in the same manner as other county revenues appropriated to the school fund in accordance with Tenn. Code Ann. § 49-605. Otherwise, a direct violation of 31 U.S.C.A. § 1243 (a)(4) will result by the use of Federal Revenue Sharing Funds by the Quarterly Court of Madison County, Tennessee, in a manner different than the use to which other county revenues are applied.

CONCLUSION

The holding of the Tennessee Supreme Court disregarded the federal mandate set forth in 31 U.S.C.A. § 1243 (a)(4) that Federal Revenue Sharing Funds are to be expended by states and local governments only in accordance with the laws and procedures applicable to the expenditure of its own revenues. Moreover, there is a strong need for a definitive interpretation of this statutory provision since it is the sole provision that provides guidance to the states and local governments as to the laws and procedures that are to followed for the expenditure of Federal Revenue Sharing Funds.

For these reasons, the Tennessee Municipal League, as *amicus curiae*, respectfully requests this Court to issue a Writ of Certiorari in this matter.

Respectfully submitted,

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